

REMARKS

Claims 1-18 and 20-29 are pending in the present application. Reconsideration of the claims is respectfully requested.

I. 35 U.S.C. § 121

The Office Action requires a restriction to one of the following sets of claims:

I. Claims 1-8, 13-16, 17-18, 23-27 and 28-29, allegedly classified in class 709, subclass 219; and,

II. Claims 9-12 and 20-22, allegedly classified in class 709, subclass 227.

In response to the Restriction Requirement, Applicant elects Invention II, **with traverse**.

For restriction to be proper, the Examiner must apply a two-pronged test. First, the inventions must be distinct. Second, the existence of multiple allegedly distinct inventions must present an undue burden on the Examiner. If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct inventions. See MPEP § 803.

Applicant respectfully disagrees with the classification of the alleged inventions. Class 709 is defined as electrical computers and digital processing systems: multiple computer or process coordinating. Subclass 219 is defined as remote data accessing/accessing a remote server. The definition of subclass 219 states, "[s]ubject matter wherein large blocks of data (e.g., streamed data) are transferred between a remote file server and a requesting computer." Certainly, this subclass would be included in an exhaustive search of both inventions. However, the invention recited in claims 1-8, 13-18, and 23-29 is primarily directed to extending the capabilities of a web server using code modules. Subclass 201 of class 709 is defined as distributed data processing and subclass 203, which is an indent of subclass 201, is defined as client/server. The definition of subclass 203 states, "[s]ubject matter wherein at least one local computer provides a user interface and performs local data processing to interact with at least one remote computer which implements data processing (e.g., data management, data sharing) within a generic time-sharing environment in response to the local computer to transfer

data between the local computer and the remote computer.” Applicants assert that the claims in alleged Invention I are properly classified in class 709, subclass 203, rather than class 709, subclass 219.

Subclass 227 is defined as computer-to-computer session/connection establishing, including subject matter comprising means or steps for creating a session connection between the computers. While claims 9-12 and 20-22 recite communication between two computers, claim 9, for example, also recites enabling a web client to add functionality to a web server using a code module. Therefore, both of the alleged inventions could conceivably be classified in class 709, subclass 203. Even assuming, *arguendo*, that invention I is correctly classified in class 709, subclass 219, invention II is equally as applicable to class 709, subclass 219.

Since, the alleged inventions may be classified in the same class and subclass(es), the inventions have not acquired a separate status in the art and restriction is not proper. Certainly, a competent search of invention I would encompass the subject matter of invention II, and *vice versa*. Thus, examining both of the alleged inventions would not present an undue burden on the examiner. In fact, the pending claims have already received three actions on the merits. Therefore, the Examiner has presumably performed an exhaustive search on both of the alleged inventions. As such, the existence of two allegedly distinct inventions does not present an undue burden on the Examiner at this point in prosecution.

Moreover, election becomes fixed when the claims in an application have received an action on their merits by the Office. See MPEP § 818.01. Therefore, election of both alleged inventions I and II is fixed by at least the Office Action issued September 10, 2003.

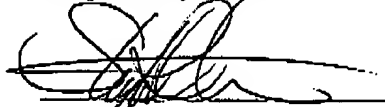
For the above reasons, it is respectfully requested that the Restriction Requirement be withdrawn.

II. Conclusion

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

DATE: April 7, 2004

Respectfully submitted,



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